

FINAL SETTLEMENT AND RELEASE AGREEMENT

THIS FINAL SETTLEMENT AND RELEASE AGREEMENT ("Agreement") is entered into by **JEAN MCALLISTER** (hereinafter "Releasor") and the **ASHEVILLE CITY BOARD OF EDUCATION** (hereinafter "Board") on September 13, 2018.

I. RECITALS

a. Around 12:15p.m. on August 2, 2018, Releasor was driving her automobile, a 1998 Toyota Corolla, VIN 2T1BR12E7WC042130 (the "Vehicle"), in a northwest direction along Victoria Road toward Mission Hospital when a tree fell on to the Vehicle (the "Incident");

b. Releasor was not physically injured as a result of the Incident but the Vehicle sustained significant damage, including, but not limited to: damages the roof, the back windshield and two tail lights;

c. Releasor alleges that the tree that fell on her Vehicle fell from the Board's property that runs alongside Victoria Road;

d. Releasor has demanded that the Board pay for the damages to her Vehicle;

e. It is undisputed that Releasor is the sole owner of the Vehicle; and

f. While the Board does not admit any liability as a result of the Incident, the Board, nevertheless, desires to settled with Releasor any and all claims or possible claims with respect to the Incident.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged by Releasor, it is hereby agreed as follows:

II. RELEASE AND DISCHARGE

a. In consideration of the payment of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00) by or on behalf of the Board, Releasor fully discharges and releases the Board and its directors, members, employees, representatives, agents, assigns, current and future board members, liability coverage providers, attorneys and successors of any and all past, present and future claims, demands, causes of actions, damages, costs, expenses, and liability of any nature whatsoever, whether in law or equity, whether known or unknown, arising out of the Incident. Releasor fully understand that this Agreement is a full and complete general release of all claims against the Board and is intended as a final settlement between the Board and Releasor. Payment will be made to Releasor within ten (10) business days after execution of this Agreement and the check will be certified mail to Releasor at 1316 Bee Tree Road, Swannanoa, NC 28778.

Releasor hereby specifically discharge any and all claim(s) she may have against the Board under North Carolina law, or any other federal, state, city, county, board of education or local statute, policy or ordinance, the common law, any term, provision, or amendment to the Constitution of the United States of America or to the Constitution of the State of North Carolina, or otherwise, and any and all claims for relief against the Board which have been or could have been asserted against her arising out of the Incident.

Releasor also understand and agree that this is a release not only of claims against the Board regarding alleged damages and injuries now known, and regarding any damages, injuries or complications that may develop in the future from said presently existing alleged damages and injuries, but also for any additional damages and injuries or complications thereof that may arise, directly or indirectly, from Incident, whether related or unrelated to the presently existing alleged damages, even though at the present time said additional damages and injuries are completely unknown and unsuspected. Releasor further understands and agrees that the amount received in exchange for this Agreement is accepted not only for the injuries and damages that are now, or in the future may be, claimed to have resulted from the Incident, but is also accepted to avoid the uncertainty, expense and delay of litigation. Releasor acknowledges that if she later discovers facts different from, or in addition to, those which she now knows or believes to be true concerning the Incident, or any other subject matter, that nevertheless this Agreement shall be and remain effective in all respects.

b. For additional good and valuable consideration, Releasor fully discharges and releases the Board of any and all past, present and future claims arising out of the Incident.

c. Releasor understands and agrees that this Agreement represents the settlement of disputed claims and is not intended to be nor shall it be construed as an admission of liability on the part of the Board but is accepted to avoid the uncertainty, expense and delay of litigation. It is expressly agreed and understood that the Board does not admit that it is liable to Releasor in any way, but rather that it specifically denies that any action taken or omission made with regard to Releasor was in violation of Releasor's statutory, constitutional or common law rights or was otherwise wrongful or actionable in any regard.

d. Releasor further understands that the Board has not made any agreement or promise to do any act or thing that is not set forth in this Agreement and that this Agreement is executed and delivered as a compromise in order to avoid the expense of litigation, to terminate all controversies between Releasor and the Board and to finally resolve all claims by and between Releasor and Board.

e. Releasor agrees to execute any further or additional documents, if any, and to take such other action as may be reasonably necessary to fully and completely carry out the intention of the parties hereto and the terms of this Agreement.

f. In further consideration of the compromise of disputed claims, Releasor agrees to satisfy all medical bills and liens, and further agree to indemnify and hold the Board harmless with respect to any past, present, or future obligation of payment of same. Further, Releasor agrees to indemnify and hold harmless the Board from any and all actions, claims, liens, or

demands of any nature that are filed or will be filed against them, which arise out of the damages to Releasor and Releasor's heirs, assigns, agents or insurers, resulting or claimed to have resulted from the incident. Releasor represents and warrants that any and all liens have been paid fully, compromised, satisfied, or will be satisfied fully, from the settlement proceeds and that all balances have been fully paid or compromised, or will be fully paid or compromised from the settlement proceeds.

g. This Agreement will be subject to and interpreted under the laws of the State of North Carolina. In the event that any provision or portion of the Agreement shall be found to be void or invalid for any reason, then such portion or provision shall be deemed severable from the remaining provisions or portions of this Agreement and shall not affect the validity of the remaining provisions, which shall be given full effect as if the void or invalid provision had not been included herein.

h. Both the Releasor and the Board shall pay their own costs associated with the resolution of this matter, including attorneys' fees.

i. Releasor shall maintain the confidentiality of this Agreement and shall not disclose the contents herein, whether orally or in writing, to any person or entity not a party to this Agreement.

j. Releasor understands and agrees that the money now being paid to her is fair and equitable under all circumstances and Releasor regards it as full consideration for the final settlement of all claims, rights, and damages that Releasor has or may have against the Board arising out of the Incident. Releasor understands that this is all the money or consideration that she will receive from the Board as a result of the allegations alleged in the Incident.

k. This Agreement contains the entire agreement between the Releasor and the Board, and Releasor agrees that the terms of this Agreement are contractual and not a mere recital.

l. This Agreement may be signed in counterpart and a signature page signed and sent to the other party via facsimile or email shall be treated as an original.

[Intentionally left blank]

BY EXECUTING THIS AGREEMENT, RELEASOR REPRESENTS THAT THE
TERMS OF THIS AGREEMENT HAVE BEEN COMPLETELY READ AND THOSE
TERMS ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED.

FOR THE RELEASOR:


JEAN MCALLISTER

FOR THE BOARD:


DR. DENISE PATTERSON
Superintendent

This Agreement has been pre-audited as required by the School Budget and Fiscal Control Act.


ACS Finance Officer